

**Testimony of Representative Kelda Helen Roys and Senator Jim Sullivan Regarding Assembly
Bill 354:
Fairness for Victims Act
Assembly Committee on Judiciary and Ethics
August 25, 2009**

Chairman Hebl and members of the committee, thank you for holding a hearing on Assembly Bill 354, the Fairness for Victims Act.

Assembly Bill 354 will ensure that individuals who are injured as the result of an intentional act will have the same rights as those who are hurt by accident.

Under current law, if you are injured as a result of another person's negligence, you have three years to file a lawsuit. But if someone hurts you in an intentional act, you only have two years to take action.

In other words, if you slip on your neighbor's walk, you have a three-year window to file suit. But if your neighbor punches you in the face, you have only two years. It makes little sense to effectively cut a defendant a break for intentional harm. We need to send a message that in Wisconsin, we value justice and fairness.

This bill was inspired by countless stories of unjust treatment for victims of intentional harm, including a situation in 2004 where delinquents spread plastic wrap across a damaged roadway. That intentional act injured two bikers who crashed their motorcycles as a result. When the victims filed suit a little over two years later, they had missed the statute of limitations deadline and the case was dismissed.

Due to financial and other barriers to the courts, it can sometimes take several years to prepare for and file a claim, even when a victim has a strong case. We must also be mindful of the devastating impact an intentional harm can have on a victim. In cases where victims have been intentionally harmed as a result of domestic violence, healing enough to effectively pursue a case can take a substantial amount of time.

Making the statute of limitations for intentional harm three years is simply the right thing to do.

All victims of intentionally harmful acts deserve a chance to have their day in court. This bill will remedy the inequity of our current law—and level the playing field for all those who are injured by the intentionally harmful actions of others.



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COMMITTEE ON JUDICIARY & ETHICS
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**PUBLIC HEARING ON
ASSEMBLY BILL 354
AUGUST 25, 2009**

**TESTIMONY OF
KEITH R. CLIFFORD
ON BEHALF OF THE
WISCONSIN ASSOCIATION FOR JUSTICE**

Representative Hebl and members of the Committee, my name is Keith R. Clifford. I am a partner in the Madison law firm of Clifford and Raihala. I am a past president of the Wisconsin Association for Justice. I thank you for the opportunity to appear today to testify in support of Assembly Bill 354.

Under current law, a person has two years to file a claim if injured by an intentional tort. An intentional tort is a civil wrong resulting from an intentional act on the part of the wrongdoer. In other words the person must have acted with a resolve or purpose to reach a particular result. It differs from negligence, which results from the failure of the wrongdoer to take sufficient care in fulfilling a duty owed to the injured person.

Common intentional torts include:

- Assault: An intentional show of force or movement that could reasonably make the person approached feel in danger of physical attack or harmful physical contact.

- Battery: Any intentional unwanted or unprovoked harmful physical contact with another person by a person or object (like a car, umbrella or stick).
- Libel: False and malicious statements that are published which are designed to injure a person's reputation, business or property.
- Slander: Oral statements of a person that are false and malicious which are designed to injure a person's reputation, business or property.
- False imprisonment: Any unlawful restraint or deprivation of a person's liberty.

Recently, there was a case where two people were seriously injured when their motorcycle ran into shrink wrap that had been wrapped five times around two sign posts and across the road in Waukesha County by four teenaged boys. The boys and their parents, along with their insurance companies were sued for negligence. The insurance companies objected saying the conduct was intentional and not covered by insurance. The circuit court determined that if this were an intentional act, the lawsuit would have to be dismissed because the case was not filed within the two year statute of limitations for intentional torts. If the actions amounted to negligence, then the lawsuit was timely filed and the action could proceed. The Court determined the actions were intentional and dismissed the lawsuit. *Buckel et al. v. Allstate Indemnity Co., et al.* (2nd District Court of Appeals unpublished opinion).

It does not make sense to have one date for filing an intentional tort lawsuit, while there is another for filing a negligence lawsuit. In the *Buckel* case, the distinction resulted in the boys not being held accountable for their conduct and the injured cyclists not being compensated for their damages.

There should be a three-year statute of limitations for both intentional torts and negligence claims. We ask the Committee to support the passage of AB 354. Thank you.

Testimony



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To: Members of the Assembly Committee on the Judiciary and Ethics
From: Tony Gibart, Policy Coordinator, Wisconsin Coalition Against Domestic Violence
Date: August 25, 2009
Re: Assembly Bill 354—Fairness for Victims Act

Chairperson Hebl and Members of the Committee, thank you for allowing me to provide testimony on AB 354, the Fairness for Victims Act. My name is Tony Gibart, and I represent the Wisconsin Coalition Against Domestic Violence and the Wisconsin Coalition Against Sexual Assault. WCADV and WCASA are the statewide membership organizations that represent domestic violence and sexual assault victim service providers and survivors. AB 354 would extend the statute of limitations for intentional torts to three years, which would then be equivalent to the timeframe allowed for unintentional torts. WCADV and WCASA fully support the Fairness for Victims Act.

The legislation is based on the principle that it is unfair to provide victims of intentional harm less time to seek justice than the period that is available to victims of unintentional harm. This principle is especially true when it is applied to victims of domestic violence and sexual assault. The unique characteristics of domestic violence and sexual assault often prevent victims from bringing suit against perpetrators within two years.

First, acts of intimate and sexual violence are incredibly traumatic. Often survivors need to undergo a significant period of healing before they are able to confront their abusers in court and face the possibility of mentally reliving these traumatic experiences during the judicial process.

Second, intimate partner violence often occurs in cycles. After violent incidents, abusers may try to reconcile with their victims, making promises to change. Because of their economic dependence on, or emotional attachment to, perpetrators, many times survivors accept these offers and hope for an end to the violence. These "honeymoon phases" may last for a significant period of time. By the time the victim leaves the abuser for good the statute of limitations may have expired, and in essence, the abuser has achieved civil immunity for past incidents.

Lastly, and most importantly, domestic violence and sexual assault are at their core acts of power and control. The control a perpetrator attempts to exert over a victim lasts well after the tort occurs or the potential civil action accrues. For survivors, abuse does not confine itself to discrete acts and isolated incidents. The abuse continues, often for many years, as perpetrators seek to economically ruin victims or threaten the safety of victims and their children. Perpetrators' acts of control prevent survivors from speaking out about abuse, and therefore, can be real barriers to filing suit within the required two years.

Thank you again for the opportunity to provide testimony. Expanding the statute of limitations for intentional torts will make the civil justice system more responsive to victims of domestic violence and sexual assault and will make it less likely that perpetrators escape accountability. I urge the committee to support AB 354.